

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL
DEVELOPMENT PERMIT ISSUED BY
MASON COUNTY TO TWANOH FALLS
BEACH CLUB, INC.

M. W. and JUDY BRACHVOGEL, et al.,

Appellants,

v.

MASON COUNTY and TWANOH FALLS
BEACH CLUB, INC.,

Respondents.

SHB No. 189

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

This matter, the appeal from the action of Mason County modifying a substantial development permit granted to Twanoh Falls Beach Club, Inc., came before the members of the Shorelines Hearings Board at a formal hearing in Lacey, Washington, at 10:00 a.m., August 12, 1975. Board members present were Chris Smith, Chairman, W. A. Gissberg, Robert F. Hintz, and Gerald D. Probst. Hearing Examiner David Akana presided.

Appellants were represented by their attorney, John A. Petrich;

1 respondent, Twanoh Falls Beach Club, Inc., was represented by its
2 attorney, Mary Ellen Hanley. Respondent Mason County, having received
3 notice of this proceeding and hearing, made no appearance. Olympia
4 court reporter, Eugene E. Barker, recorded the proceeding.

5 This matter was before the Board, in some form, at two previous
6 hearings, SHB Nos. 45 and 45-A; SHB Nos. 140, 140-A and 140-B. This
7 matter concerns the legal effect of the Board's Order in SHB Nos. 140,
8 et al.

9 As a preliminary matter, respondent Twanoh Falls Beach Club, Inc.
10 (hereinafter "TFBC") moved to dismiss the appeal of the appellants on
11 the grounds that the request for review was not timely filed and is
12 barred by the provisions of RCW 43.21C.080; and that the request for
13 review has no merit. Based upon the arguments of counsel, the Motion
14 is denied.

15 The issues raised by the appellants were as follows:

16 1. To the extent that the permit as issued authorizes the
17 construction of a 'proposed pier' the permit was issued
18 contrary to the requirements of R.C.W. 90.58.140 providing for
19 published notice of the application and hearing date thereon
for the reason that the proceedings amounted to a permit
application under chapter 90.58, Revised Code of Washington.

20 2. The Board of County Commissioners, Mason County, in
21 its capacity as "the government entity having administrative
22 jurisdiction" under R.C.W. 90.58.140 was a state agency subject
23 to the Administrative Procedure Act and violated the Admin-
istrative Procedure Act by "failure to give the required
notice; failure to maintain a record of its proceedings as
required; failure to make findings and conclusions upon which
its ultimate decision was based".

24 Testimony and documentary evidence were offered to the Board and
25 admitted. Counsel made arguments.

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27 CONCLUSIONS OF LAW AND ORDER

1 Having heard the testimony, having considered the exhibits, and
2 being fully advised, the Shorelines Hearings Board makes the following

3 FINDINGS OF FACT

4 I.

5 On December 6, 1974, this Board entered its Final Findings of Fact,
6 Conclusions of Law and Order in SHB Nos. 140, et al. The parties in the
7 present matter were opposing parties in the aforementioned case.

8 II.

9 On December 30, 1974, pursuant to a request from TFBC, Mason County
10 held a public hearing at which time Shoreline Permit No. 24 was con-
11 sidered in light of this Board's Order in SHB Nos. 140, et al. The County
12 thereafter adopted the suggested changes of this Board. The permit
13 modification was made as a formal resolution to which drawings were
14 attached.

15 III.

16 On January 6, 1975, the Board's Order in SHB Nos. 140, et al. was
17 appealed to the Thurston County Superior Court in Cause No. 51683. On
18 July 10, 1975, the Court entered its judgment affirming the Order of this
19 Board.

20 IV.

21 On January 9 and 16, 1975, TFBC published notice pursuant to the
22 State Environmental Policy Act, chapter 43.21C RCW, disclosing that
23 certain actions were taken by the Mason County Board of Commissioner with
24 respect to the proposed development.

25 V.

26 On April 30, 1975, appellants, through their attorney, received a

27 FINAL FINDINGS OF FACT,
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1 copy of Mason County's resolution dated December 30, 1974.

2 VI.

3 On May 27, 1975, pursuant to RCW 90.58.140, appellants filed their
4 request for review of Mason County's action as described in Finding of
5 Fact II above.

6 VII.

7 Neither Mason County nor TFBC gave any public notice of the pending
8 reconsideration of Shoreline Permit No. 24 pursuant to RCW 90.58.140(3).

9 VIII.

10 Any Conclusion of Law which should be deemed a Finding of Fact is
11 hereby adopted as such.

12 From these Findings the Shorelines Hearings Board comes to these

13 CONCLUSIONS OF LAW

14 I.

15 Mason County's reconsideration of Shoreline Permit No. 24 on
16 December 30, 1974 is not a new application, rather, it is a modification
17 of an existing permit, within the ambit of the first publicized notice,
18 which was directed by the Shorelines Hearings Board. It is therefore not
19 subject to the notice provision of RCW 90.58.140.

20 II.

21 The Board of County Commissioners, Mason County, is not a state
22 agency subject to the Administrative Procedures Act, chapter 34.04 RCW,
23 and is, therefore, not required to hold its proceedings in conformance
24 thereto. SHB Nos. 45, 45-A; 140, 140-A, 140-B.

25 III.

26 Any Finding of Fact which should be deemed a Conclusion of

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

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1 hereby adopted as such.

2 From these Conclusions, the Shorelines Hearings Board makes the
3 following

4 ORDER


5 The action of Mason County modifying the Substantial Development
6 Permit No. 24 is hereby affirmed.


7 DONE at Lacey, Washington this 28th day of August, 1975.

8 SHORELINES HEARINGS BOARD

9 
10 CHRIS SMITH, Chairman

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12 W. A. GISSBERG, Member

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14 ROBERT F. HINTZ, Member

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16 GERALD D. PROBST, Member

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27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

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2 From these Conclusions, the Shorelines Hearings Board makes the
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4 ORDER

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8 SHORELINES HEARINGS BOARD

9 Chris Smith
10 CHRIS SMITH, Chairman

11 W. A. Gissberg
12 W. A. GISSBERG, Member

13 Robert F. Hintz
14 ROBERT F. HINTZ, Member

15 Gerald D. Probst
16 GERALD D. PROBST, Member

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1 inconsistent with the ascertainable master program being developed for
2 the area. Therefore, the action of the City must be affirmed. If, in
3 the future, the master program finally adopted by the City authorizes
4 land-based aircraft facilities, appellant will have the option of
5 reapplying and receiving its permit with its only loss being time.

6 VIII.

7 Any Finding of Fact which should be deemed a Conclusion of Law
8 is hereby adopted as such.

9 From these Conclusions the Shorelines Hearings Board makes and
10 enters this

11 ORDER

12 The action of the City of Seattle denying a substantial develop-
13 ment permit for a helistop to Seattle-First National Bank is affirmed.

14 DATED this 5th day of March, 1976.

15 SHORELINES HEARINGS BOARD

16 Chris Smith
17 CHRIS SMITH, Chairman

18 W. A. Gissberg
19 W. A. GISSBERG, Member

20 Robert E. Beaty
21 ROBERT E. BEATY, Member

22 Walt Woodward
23 WALT WOODWARD, Member

24 RALPH A. BESWICK, Member

25 Gordon Y. Erickson
26 GORDON Y. ERICKSEN, Member

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